

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

DECEMBER 16, 1970.—Ordered to be printed

Mr. PERKINS, from the committee on conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 2193]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following: *That this Act may be cited as the "Occupational Safety and Health Act of 1970"*.

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) *The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.*

(b) *The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources—*

(1) *by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to*

institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

(9) by providing for the development and promulgation of occupational safety and health standards;

(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;

(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;

(12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem;

(13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

DEFINITIONS

SEC. 3. *For the purposes of this Act—*

(1) The term "Secretary" means the Secretary of Labor.

(2) The term "Commission" means the Occupational Safety and Health Review Commission established under this Act.

(3) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than the Trust Territory of the Pacific Islands), or between points in the same State but through a point outside thereof.

(4) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(5) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

(6) The term "employee" means an employee of an employer who is employed in a business of his employer which affects commerce.

(7) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(8) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(9) The term "national consensus standard" means any occupational safety and health standard or modification thereof which (1) has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the Secretary that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, (2) was formulated in a manner which afforded an opportunity for diverse views to be considered and (3) has been designated as such a standard by the Secretary, after consultation with other appropriate Federal agencies.

(10) The term "established Federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on the date of enactment of this Act.

(11) The term "Committee" means the National Advisory Committee on Occupational Safety and Health established under this Act.

(12) The term "Director" means the Director of the National Institute for Occupational Safety and Health.

(13) The term "Institute" means the National Institute for Occupational Safety and Health established under this Act.

(14) The term "Workmen's Compensation Commission" means the National Commission on State Workmen's Compensation Laws established under this Act.

APPLICABILITY OF THIS ACT

SEC. 4. (a) This Act shall apply with respect to employment performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and the Canal Zone. The Secretary of the Interior shall, by regulation, provide for judicial enforcement of this Act by the courts established for areas in which there are no U.S. district courts having jurisdiction.

(b)(1) Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021), exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

(2) The safety and health standards promulgated under the Act of June 30, 1936, commonly known as the Walsh-Healey Act (41 U.S.C. 35 et seq.), the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), Public Law 91-54, Act of August 9, 1969 (40 U.S.C. 333), Public Law 85-742, Act of August 23, 1958 (33 U.S.C. 941), and the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.) are superseded on the effective date of corresponding standards, promulgated under this Act, which are determined by the Secretary to be more effective. Standards issued under the laws listed in this paragraph and in effect on or after the effective date of this Act shall be deemed to be occupational safety and health standards issued under this Act, as well as under such other Acts.

(3) The Secretary shall, within three years after the effective date of this Act, report to the Congress his recommendations for legislation to avoid unnecessary duplication and to achieve coordination between this Act and other Federal laws.

(4) Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

DUTIES

SEC. 5. (a) Each employer—

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this Act.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

SEC. 6. (a) Without regard to chapter 5 of title 5, United States Code, or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this Act and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.

(b) The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health, Education, and Welfare, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this Act, the Secretary may request the recommendations of an advisory committee appointed under section 7 of this Act. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health, Education, and Welfare, together with all pertinent factual information developed by the Secretary or the Secretary of Health, Education, and Welfare, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

(4) Within sixty days after the expiration of the period provided for the submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Secretary determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis

of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(6) (A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes that (i) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and (iii) he has an effective program for coming into compliance with the standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing: Provided, That the Secretary may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice (I) so long as the requirements of this paragraph are met and (II) if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

(B) An application for a temporary order under this paragraph (6) shall contain:

(i) a specification of the standard or portion thereof from which the employer seeks a variance,

(ii) a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor,

(iii) a statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard,

(iv) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard, and

(v) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative,

posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Secretary for a hearing.

(C) The Secretary is authorized to grant a variance from any standard or portion thereof whenever he determines, or the Secretary of Health, Education, and Welfare certifies, that such variance is necessary to permit an employer to participate in an experiment approved by him or the Secretary of Health, Education, and Welfare designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(7) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health, Education, and Welfare, such examinations may be furnished at the expense of the Secretary of Health, Education, and Welfare. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health, Education, and Welfare, and, at the request of the employee, to his physician. The Secretary, in consultation with the Secretary of Health, Education, and Welfare, may by rule promulgated pursuant to section 553 of title 5, United States Code, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(8) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

(c) (1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (B) that such emergency standard is necessary to protect employees from such danger.

(2) Such standard shall be effective until superseded by a standard

promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a proceeding in accordance with section 6(b) of this Act, and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.

(d) Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(e) Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

(f) Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

(g) In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health, Education, and Welfare regarding the need for mandatory standards in determining the priority for establishing such standards.

ADVISORY COMMITTEES; ADMINISTRATION

SEC. 7. (a)(1) There is hereby established a National Advisory Committee on Occupational Safety and Health consisting of twelve members

appointed by the Secretary, four of whom are to be designated by the Secretary of Health, Education, and Welfare, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and composed of representatives of management, labor, occupational safety and occupational health professions, and of the public. The Secretary shall designate one of the public members as Chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health.

(2) The Committee shall advise, consult with, and make recommendations to the Secretary and the Secretary of Health, Education, and Welfare on matters relating to the administration of the Act. The Committee shall hold no fewer than two meetings during each calendar year. All meetings of the Committee shall be open to the public and a transcript shall be kept and made available for public inspection.

(3) The members of the Committee shall be compensated in accordance with the provisions of section 3109 of title 5, United States Code.

(4) The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.

(b) An advisory committee may be appointed by the Secretary to assist him in his standard-setting functions under section 6 of this Act. Each such committee shall consist of not more than fifteen members and shall include as a member one or more designees of the Secretary of Health, Education, and Welfare, and shall include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of the employers involved, and of persons similarly qualified to present the viewpoint of the workers involved, as well as one or more representatives of health and safety agencies of the States. An advisory committee may also include such other persons as the Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of such committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health, and one or more representatives of nationally recognized standards-producing organizations, but the number of persons so appointed to any such advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. Persons appointed to advisory committees from private life shall be compensated in the same manner as consultants or experts under section 3109 of title 5, United States Code. The Secretary shall pay to any State which is the employer of a member of such a committee who is a representative of the health or safety agency of that State, reimbursement sufficient to cover the actual cost to the State resulting from such representative's membership on such committee. Any meeting of such committee shall be open to the public and an accurate record shall be kept and made available to the public. No member of such committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule.

(c) In carrying out his responsibilities under this Act, the Secretary is authorized to—

(1) use, with the consent of any Federal agency, the services, facilities, and personnel of such agency, with or without reimbursement, and with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement; and

(2) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of the rate specified at the time of service for grade GS-18 under section 5332 of title 5, United States Code, including traveltime, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

SEC. 8. (a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

(b) In making his inspections and investigations under this Act the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the Secretary, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c) (1) Each employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health, Education, and Welfare, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The Secretary shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this Act, including the provisions of applicable standards.

(2) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-

related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provision for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 6, and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the Secretary, the Secretary of Health, Education, and Welfare, or a State agency under this Act shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(e) Subject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Secretary or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(f) (1) Any employees or representative of employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to subsection (g) of this section. If upon receipt of such notification the Secretary determines there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the Secretary determines there are no reasonable grounds to believe that a violation or danger exists he shall notify the employees or representative of the employees in writing of such determination.

(2) Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act which they

have reason to believe exists in such workplace. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation and shall furnish the employees or representative of employees requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

(g) (1) The Secretary and Secretary of Health, Education, and Welfare are authorized to compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section.

(2) The Secretary and the Secretary of Health, Education, and Welfare shall each prescribe such rules and regulations as he may deem necessary to carry out their responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment.

CITATIONS

SEC. 9. (a) If, upon inspection or investigation, the Secretary or his authorized representative believes that an employer has violated a requirement of section 5 of this Act, of any standard, rule or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Secretary may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

(b) Each citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Secretary, at or near each place a violation referred to in the citation occurred.

(c) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

PROCEDURE FOR ENFORCEMENT

SEC. 10. (a) If, after an inspection or investigation, the Secretary issues a citation under section 9(a), he shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 17 and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. If, within fifteen working days from the receipt of the notice issued by the Secretary the employer fails to notify the Secretary that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under subsection (c) within such time, the citation and the assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(b) If the Secretary has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties), the Secretary shall notify the

employer by certified mail of such failure and of the penalty proposed to be assessed under section 17 by reason of such failure, and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the Secretary's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the Secretary, the employer fails to notify the Secretary that he intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(c) If an employer notifies the Secretary that he intends to contest a citation issued under section 9(a) or notification issued under subsection (a) or (b) of this section, or if, within fifteen working days of the issuance of a citation under section 9(a), any employee or representative of employees files a notice with the Secretary alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section). The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation or proposed penalty, or directing other appropriate relief, and such order shall become final thirty days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the Secretary, after an opportunity for a hearing as provided in this subsection, shall, issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

JUDICIAL REVIEW

SEC. 11 (a) Any person adversely affected or aggrieved by an order of the Commission issued under subsection (c) of section 10 may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission shall be considered

by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

(b) The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the employer has its principal office, and the provisions of subsection (a) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a), is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 10, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a), the court of appeals may assess the penalties provided in section 17, in addition to invoking any other available remedies.

(c)(1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction,

for cause shown to restrain violations of paragraph (1) of this subsection order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(3) Within 90 days of the receipt of a complaint filed under this subsection the Secretary shall notify the complainant of his determination under paragraph 2 of this subsection.

THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SEC. 12. (a) *The Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, from among persons who by reason of training, education, or experience are qualified to carry out the functions of the Commission under this Act. The President shall designate one of the members of the Commission to serve as Chairman.*

(b) *The terms of members of the Commission shall be six years except that (1) the members of the Commission first taking office shall serve, as designated by the President at the time of appointment, one for a term of two years, one for a term of four years, and one for a term of six years, and (2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.*

(c)(1) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

“(57) Chairman, Occupational Safety and Health Review Commission.”

(2) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

“(94) Members, Occupational Safety and Health Review Commission.”

(d) *The principal office of the Commission shall be in the District of Columbia. Whenever the Commission deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place.*

(e) *The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint such hearing examiners and other employees as he deems necessary to assist in the performance of the Commission's functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rate: Provided, That assignment, removal and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code.*

(f) *For the purpose of carrying out its functions under this Act, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.*

(g) *Every official act of the Commission shall be entered of record, and its hearings and records shall be open to the public. The Commission is authorized to make such rules as are necessary for the orderly trans-*

action of its proceedings. Unless the Commission has adopted a different rule, its proceedings shall be in accordance with the Federal Rules of Civil Procedure.

(h) The Commission may order testimony to be taken by deposition in any proceedings pending before it at any state of such proceeding. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(i) For the purpose of any proceeding before the Commission, the provisions of section 11 of the National Labor Relations Act (29 U.S.C. 161) are hereby made applicable to the jurisdiction and powers of the Commission.

(j) A hearing examiner appointed by the Commission shall hear, and make a determination upon, any proceeding instituted before the Commission and any motion in connection therewith, assigned to such hearing examiner by the Chairman of the Commission, and shall make a report of any such determination which constitutes his final disposition of the proceedings. The report of the hearing examiner shall become the final order of the Commission within thirty days after such report by the hearing examiner, unless within such period any Commission member has directed that such report shall be reviewed by the Commission.

(k) Except as otherwise provided in this Act, the hearing examiners shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5108 of title 5, United States Code. Each hearing examiner shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title 5, United States Code.

PROCEDURES TO COUNTERACT IMMINENT DANGERS

SEC. 13. (a) The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(b) Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this Act. The proceeding shall be as provided by Rule 65 of the Federal Rules, Civil Procedure, except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Secretary that relief be sought.

(d) If the Secretary arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, might bring an action against the Secretary in the United States district court for the district in which the imminent danger is alleged to exist or the employer has its principal office, or for the District of Columbia, for a writ of mandamus to compel the Secretary to seek such an order and for such further relief as may be appropriate.

REPRESENTATION IN CIVIL LITIGATION

SEC. 14. Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this Act but all such litigation shall be subject to the direction and control of the Attorney General.

CONFIDENTIALITY OF TRADE SECRETS

SEC. 15. All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this Act which contains or which might reveal a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. In any such proceeding the Secretary, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

VARIATIONS, TOLERANCES, AND EXEMPTIONS

SEC. 16. The Secretary, on the record, after notice and opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper to avoid serious impairment of the national defense. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.

PENALTIES

SEC. 17. (a) Any employer who willfully or repeatedly violates the requirements of section 5 of this Act, any standard, rule, or order promulgated pursuant to section 6 of this Act, or regulations prescribed pursuant to this Act, may be assessed a civil penalty of not more than \$10,000 for each violation.

(b) Any employer who has received a citation for a serious violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, shall be assessed a civil penalty of up to \$1,000 for each such violation.

(c) Any employer who has received a citation for a violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of regulations prescribed pursuant to this Act, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to \$1,000 for each such violation.

(d) Any employer who fails to correct a violation for which a citation has been issued under section 9(a) within the period permitted for its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than \$1,000 for each day during which such failure or violation continues.

(e) Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000 or by imprisonment for not more than one year, or by both.

(f) Any person who gives advance notice of any inspection to be conducted under this Act, without authority from the Secretary or his designees, shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both.

(g) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

(h) (1) Section 1114 of title 18, United States Code, is hereby amended by striking out "designated by the Secretary of Health, Education, and Welfare to conduct investigations, or inspections under the Federal Food, Drug, and Cosmetic Act" and inserting in lieu thereof "or of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions".

(2) Notwithstanding the provisions of sections 1111 and 1114 of title 18, United States Code, whoever, in violation of the provisions of section 1114 of such title, kills a person while engaged in or on account of the performance of investigative, inspection, or law enforcement functions added to such section 1114 by paragraph (1) of this subsection, and who would otherwise be subject to the penalty provisions of such section 1111, shall be punished by imprisonment for any term of years or for life.

(i) Any employer who violates any of the posting requirements as prescribed under the provisions of this Act, shall be assessed a civil penalty of up to \$1,000 for each violation.

(j) The Commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(k) For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which

exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(m) Civil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation is alleged to have occurred or where the employer has its principal office.

STATE JURISDICTION AND STATE PLANS

SEC. 18. (a) Nothing in this Act shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6.

(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgment—

(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State,

(2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 6 which relate to the same issues, and which standards, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce,

(3) provides for a right of entry and inspection of all workplaces subject to the Act which is at least as effective as that provided in section 8, and includes a prohibition on advance notice of inspections,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan,

(7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

(8) provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require.

(d) If the Secretary rejects a plan submitted under subsection (b), he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing.

(e) After the Secretary approves a State plan submitted under subsection (b), he may, but shall not be required to, exercise his authority under sections 8, 9, 10, 13, and 17 with respect to comparable standards promulgated under section 6, for the period specified in the next sentence. The Secretary may exercise the authority referred to above until he determines, on the basis of actual operations under the State plan, that the criteria set forth in subsection (c) are being applied, but he shall not make such determination for at least three years after the plan's approval under subsection (c). Upon making the determination referred to in the preceding sentence, the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination.

(f) The Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan (or any assurance contained therein), he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

(g) The State may obtain a review of a decision of the Secretary withdrawing approval of or rejecting its plan by the United States court of appeals for the circuit in which the State is located by filing in such court within thirty days following receipt of notice of such decision a petition to modify or set aside in whole or in part the action of the Secretary. A copy of such petition shall forthwith be served upon the Secretary, and thereupon the Secretary shall certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of title 28, United States Code. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan is not supported by substantial evidence the court shall affirm the Secretary's decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(h) The Secretary may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under subsection (b) of this section, or two years from the date of enactment of this Act, whichever is earlier.

FEDERAL AGENCY SAFETY PROGRAMS AND RESPONSIBILITIES

SEC. 19. (a) *It shall be the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6. The head of each agency shall (after consultation with representatives of the employees thereof)—*

(1) *provide safe and healthful places and conditions of employment, consistent with the standards set under section 6;*

(2) *acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;*

(3) *keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action;*

(4) *consult with the Secretary with regard to the adequacy as to form and content of records kept pursuant to subsection (a)(3) of this section; and*

(5) *make an annual report to the Secretary with respect to occupational accidents and injuries and the agency's program under this section. Such report shall include any report submitted under section 7902(e)(2) of title 5, United States Code.*

(b) *The Secretary shall report to the President a summary or digest of reports submitted to him under subsection (a)(5) of this section, together with his evaluations of and recommendations derived from such reports. The President shall transmit annually to the Senate and the House of Representatives a report of the activities of Federal agencies under this section.*

(c) *Section 7902(c)(1) of title 5, United States Code, is amended by inserting after "agencies" the following: "and of labor organizations representing employees".*

(d) *The Secretary shall have access to records and reports kept and filed by Federal agencies pursuant to subsections (a) (3) and (5) of this section unless those records and reports are specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary shall have access to such information as will not jeopardize national defense or foreign policy.*

RESEARCH AND RELATED ACTIVITIES

SEC. 20. (a) (1) *The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments or agencies, shall conduct (directly or by grants or contracts) research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.*

(2) *The Secretary of Health, Education, and Welfare shall from time to time consult with the Secretary in order to develop specific plans for such research, demonstrations, and experiments as are necessary to produce criteria, including criteria identifying toxic substances, enabling the Secretary to meet his responsibility for the formulation of safety and health standards under this Act; and the Secretary of Health, Education, and Welfare, on the basis of such research, demonstrations, and experiments and any other information available to him, shall develop and publish at least annually such criteria as will effectuate the purposes of this Act.*

(3) *The Secretary of Health, Education, and Welfare, on the basis of such research, demonstrations, and experiments, and any other information available to him, shall develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience.*

(4) *The Secretary of Health, Education, and Welfare shall also conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore new problems, including those created by new technology in occupational safety and health, which may require ameliorative action beyond that which is otherwise provided for in the operating provisions of this Act. The Secretary of Health, Education, and Welfare shall also conduct research into the motivational and behavioral factors relating to the field of occupational safety and health.*

(5) *The Secretary of Health, Education, and Welfare, in order to comply with his responsibilities under paragraph (2), and in order to develop needed information regarding potentially toxic substances or harmful physical agents, may prescribe regulations requiring employers to measure, record, and make reports on the exposure of employees to substances or physical agents which the Secretary of Health, Education, and Welfare reasonably believes may endanger the health or safety of employees. The Secretary of Health, Education, and Welfare also is authorized to establish such programs of medical examinations and tests as may be necessary for determining the incidence of occupational illnesses and the susceptibility of employees to such illnesses. Nothing in this or any other provision of this Act shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others. Upon the request of any employer who is required to measure and record exposure of employees to substances or physical agents as provided under this subsection, the Secretary of Health, Education, and Welfare shall furnish full financial or other assistance to such employer for the purpose of defraying any additional expenses incurred by him in carrying out the measuring and recording as provided in this subsection.*

(6) *The Secretary of Health, Education, and Welfare shall publish within six months of enactment of this Act and thereafter as needed but at least annually a list of all known toxic substances by generic family or other useful grouping, and the concentrations at which such toxicity is known to occur. He shall determine following a written request by any employer or authorized representative of employees, specifying with reasonable particularity the grounds on which the request is made, whether any substance normally found in the place of employment has potentially toxic effects in such concentrations as used or found; and shall submit such determination both to employers and affected employees as soon as possible. If the Secretary of Health, Education, and Welfare determines that any substance is potentially toxic at the concentrations in which it is used or found in a place of employment, and such substance is not covered by an occupational safety or health standard promulgated under section 6, the Secretary of Health, Education, and Welfare shall immediately submit such determination to the Secretary, together with all pertinent criteria.*

(7) Within two years of enactment of this Act, and annually thereafter, the Secretary of Health, Education, and Welfare shall conduct and publish industrywide studies of the effect of chronic or low-level exposure to industrial materials, processes, and stresses on the potential for illness, disease, or loss of functional capacity in aging adults.

(b) The Secretary of Health, Education, and Welfare is authorized to make inspections and question employers and employees as provided in section 8 of this Act in order to carry out his functions and responsibilities under this section.

(c) The Secretary is authorized to enter into contracts, agreements, or other arrangements with appropriate public agencies or private organizations for the purpose of conducting studies relating to his responsibilities under this Act. In carrying out his responsibilities under this subsection, the Secretary shall cooperate with the Secretary of Health, Education, and Welfare in order to avoid any duplication of efforts under this section.

(d) Information obtained by the Secretary and the Secretary of Health, Education, and Welfare under this section shall be disseminated by the Secretary to employers and employees and organizations thereof.

(e) The functions of the Secretary of Health, Education, and Welfare under this Act shall, to the extent feasible, be delegated to the Director of the National Institute for Occupational Safety and Health established by section 22 of this Act.

TRAINING AND EMPLOYEE EDUCATION

SEC. 21. (a) The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments and agencies, shall conduct, directly or by grants or contracts (1) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Act, and (2) informational programs on the importance of and proper use of adequate safety and health equipment.

(b) The Secretary is also authorized to conduct, directly or by grants or contracts, short-term training of personnel engaged in work related to his responsibilities under this Act.

(c) The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall (1) provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this Act, and (2) consult with and advise employers and employees, and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

SEC. 22. (a) It is the purpose of this section to establish a National Institute for Occupational Safety and Health in the Department of Health, Education, and Welfare in order to carry out the policy set forth in section 2 of this Act and to perform the functions of the Secretary of Health, Education, and Welfare under sections 20 and 21 of this Act.

(b) There is hereby established in the Department of Health, Education, and Welfare a National Institute for Occupational Safety and Health. The Institute shall be headed by a Director who shall be appointed by the

Secretary of Health, Education, and Welfare, and who shall serve for a term of six years unless previously removed by the Secretary of Health, Education, and Welfare.

(c) The Institute is authorized to—

(1) develop and establish recommended occupational safety and health standards; and

(2) perform all functions of the Secretary of Health, Education, and Welfare under sections 20 and 21 of this Act.

(d) Upon his own initiative, or upon the request of the Secretary or the Secretary of Health, Education, and Welfare, the Director is authorized (1) to conduct such research and experimental programs as he determines are necessary for the development of criteria for new and improved occupational safety and health standards, and (2) after consideration of the results of such research and experimental programs make recommendations concerning new or improved occupational safety and health standards. Any occupational safety and health standard recommended pursuant to this section shall immediately be forwarded to the Secretary of Labor, and to the Secretary of Health, Education, and Welfare.

(e) In addition to any authority vested in the Institute by other provisions of this section, the Director, in carrying out the functions of the Institute, is authorized to—

(1) prescribe such regulations as he deems necessary governing the manner in which its functions shall be carried out;

(2) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purposes of the Institute and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(3) receive (and use, sell, or otherwise dispose of, in accordance with paragraph (2)), money and other property donated, bequeathed, or devised to the Institute with a condition or restriction, including a condition that the Institute use other funds of the Institute for the purposes of the gift;

(4) in accordance with the civil service laws, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this section;

(5) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code;

(6) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code;

(7) enter into contracts, grants or other arrangements, or modifications thereof to carry out the provisions of this section, and such contracts or modifications thereof may be entered into without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), or any other provision of law relating to competitive bidding;

(8) make advance, progress, and other payments which the Director deems necessary under this title without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(9) make other necessary expenditures.

(f) The Director shall submit to the Secretary of Health, Education, and Welfare, to the President, and to the Congress an annual report of the operations of the Institute under this Act, which shall include a detailed

statement of all private and public funds received and expended by it, and such recommendations as the Director deems appropriate.

GRANTS TO THE STATES

SEC. 23. (a) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States which have designated a State agency under section 18 to assist them—

(1) in identifying their needs and responsibilities in the area of occupational safety and health,

(2) in developing State plans under section 18, or

(3) in developing plans for—

(A) establishing systems for the collection of information concerning the nature and frequency of occupational injuries and diseases;

(B) increasing the expertise and enforcement capabilities of their personnel engaged in occupational safety and health programs; or

(C) otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of this Act.

(b) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States for experimental and demonstration projects consistent with the objectives set forth in subsection (a) of this section.

(c) The Governor of the State shall designate the appropriate State agency for receipt of any grant made by the Secretary under this section.

(d) Any State agency designated by the Governor of the State desiring a grant under this section shall submit an application therefor to the Secretary.

(e) The Secretary shall review the application, and shall, after consultation with the Secretary of Health, Education, and Welfare, approve or reject such application.

(f) The Federal share for each State grant under subsection (a) or (b) of this section may not exceed 90 per centum of the total cost of the application. In the event the Federal share for all States under either such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

(g) The Secretary is authorized to make grants to the States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved by the Secretary pursuant to section 18 of this Act. The Federal share for each State grant under this subsection may not exceed 50 per centum of the total cost to the State of such a program. The last sentence of subsection (f) shall be applicable in determining the Federal share under this subsection.

(h) Prior to June 30, 1973, the Secretary shall, after consultation with the Secretary of Health, Education, and Welfare, transmit a report to the President and to the Congress, describing the experience under the grant programs authorized by this section and making any recommendations he may deem appropriate.

STATISTICS

SEC. 24. (a) In order to further the purposes of this Act, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall develop and maintain an effective program of collection, compilation,

and analysis of occupational safety and health statistics. Such program may cover all employments whether or not subject to any other provisions of this Act but shall not cover employments excluded by section 4 of the Act. The Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(b) To carry out his duties under subsection (a) of this section, the Secretary may—

(1) promote, encourage, or directly engage in programs of studies, information and communication concerning occupational safety and health statistics;

(2) make grants to States or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics; and

(3) arrange, through grants or contracts, for the conduct of such research and investigations as give promise of furthering the objectives of this section.

(c) The Federal share for each grant under subsection (b) of this section may be up to 50 per centum of the State's total cost.

(d) The Secretary may, with the consent of any State or political subdivision thereof, accept and use the services, facilities, and employees of the agencies of such State or political subdivision, with or without reimbursement, in order to assist him in carrying out his functions under this section.

(e) On the basis of the records made and kept pursuant to section 8(c) of this Act, employers shall file such reports with the Secretary as he shall prescribe by regulation, as necessary to carry out his functions under this Act.

(f) Agreements between the Department of Labor and States pertaining to the collection of occupational safety and health statistics already in effect on the effective date of this Act shall remain in effect until superseded by grants or contracts made under this Act.

AUDITS

SEC. 25. (a) Each recipient of a grant under this Act shall keep such records as the Secretary or the Secretary of Health, Education, and Welfare shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is made or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary or the Secretary of Health, Education, and Welfare, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of any grant under this Act that are pertinent to any such grant.

ANNUAL REPORT

SEC. 26. *Within one hundred and twenty days following the convening of each regular session of each Congress, the Secretary and the Secretary of Health, Education, and Welfare shall each prepare and submit to the President for transmittal to the Congress a report upon the subject matter of this Act, the progress toward achievement of the purpose of this Act, the needs and requirements in the field of occupational safety and health, and any other relevant information. Such reports shall include information regarding occupational safety and health standards, and criteria for such standards, developed during the preceding year; evaluation of standards and criteria previously developed under this Act, defining areas of emphasis for new criteria and standards; an evaluation of the degree of observance of applicable occupational safety and health standards, and a summary of inspection and enforcement activity undertaken; analysis and evaluation of research activities for which results have been obtained under governmental and nongovernmental sponsorship; an analysis of major occupational diseases; evaluation of available control and measurement technology for hazards for which standards or criteria have been developed during the preceding year; description of cooperative efforts undertaken between Government agencies and other interested parties in the implementation of this Act during the preceding year; a progress report on the development of an adequate supply of trained manpower in the field of occupational safety and health, including estimates of future needs and the efforts being made by Government and others to meet those needs; listing of all toxic substances in industrial usage for which labeling requirements, criteria, or standards have not yet been established; and such recommendations for additional legislation as are deemed necessary to protect the safety and health of the worker and improve the administration of this Act.*

NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS

SEC. 27. (a) (1) *The Congress hereby finds and declares that—*

(A) the vast majority of American workers, and their families, are dependent on workmen's compensation for their basic economic security in the event such workers suffer disabling injury or death in the course of their employment; and that the full protection of American workers from job-related injury or death requires an adequate, prompt, and equitable system of workmen's compensation as well as an effective program of occupational health and safety regulation; and

(B) in recent years serious questions have been raised concerning the fairness and adequacy of present workmen's compensation laws in the light of the growth of the economy, the changing nature of the labor force, increases in medical knowledge, changes in the hazards associated with various types of employment, new technology creating new risks to health and safety, and increases in the general level of wages and the cost of living.

(2) The purpose of this section is to authorize an effective study and objective evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation for injury or death arising out of or in the course of employment.

(b) There is hereby established a National Commission on State Workmen's Compensation Laws.

(c) (1) *The Workmen's Compensation Commission shall be composed of fifteen members to be appointed by the President from among members of State workmen's compensation boards, representatives of insurance carriers, business, labor, members of the medical profession having experience in industrial medicine or in workmen's compensation cases, educators having special expertise in the field of workmen's compensation, and representatives of the general public. The Secretary, the Secretary of Commerce, and the Secretary of Health, Education, and Welfare shall be ex officio members of the Workmen's Compensation Commission.*

(2) *Any vacancy in the Workmen's Compensation Commission shall not affect its powers.*

(3) *The President shall designate one of the members to serve as Chairman and one to serve as Vice Chairman of the Workmen's Compensation Commission.*

(4) *Eight members of the Workmen's Compensation Commission shall constitute a quorum.*

(d) (1) *The Workmen's Compensation Commission shall undertake a comprehensive study and evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation. Such study and evaluation shall include, without being limited to, the following subjects: (A) the amount and duration of permanent and temporary disability benefits and the criteria for determining the maximum limitations thereon, (B) the amount and duration of medical benefits and provisions insuring adequate medical care and free choice of physician, (C) the extent of coverage of workers, including exemptions based on numbers or type of employment, (D) standards for determining which injuries or diseases should be deemed compensable, (E) rehabilitation, (F) coverage under second or subsequent injury funds, (G) time limits on filing claims, (H) waiting periods, (I) compulsory or elective coverage, (J) administration, (K) legal expenses, (L) the feasibility and desirability of a uniform system of reporting information concerning job-related injuries and diseases and the operation of workmen's compensation laws, (M) the resolution of conflict of laws, extraterritoriality and similar problems arising from claims with multistate aspects, (N) the extent to which private insurance carriers are excluded from supplying workmen's compensation coverage and the desirability of such exclusionary practices, to the extent they are found to exist, (O) the relationship between workmen's compensation on the one hand, and old-age, disability, and survivors insurance and other types of insurance, public or private, on the other hand, (P) methods of implementing the recommendations of the Commission.*

(2) *The Workmen's Compensation Commission shall transmit to the President and to the Congress not later than July 31, 1972, a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable.*

(e) (1) *The Workmen's Compensation Commission or, on the authorization of the Workmen's Compensation Commission, any subcommittee or members thereof, may, for the purpose of carrying out the provisions of this title, hold such hearings, take such testimony, and sit and act at such times and places as the Workmen's Compensation Commission deems advisable. Any member authorized by the Workmen's Compensation Commission may administer oaths or affirmations to witnesses appearing before the Workmen's Compensation Commission or any subcommittee or members thereof.*

(2) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Workmen's Compensation Commission, upon request made by the Chairman or Vice Chairman, such information as the Workmen's Compensation Commission deems necessary to carry out its functions under this section.

(f) Subject to such rules and regulations as may be adopted by the Workmen's Compensation Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an executive director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title, and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

(g) The Workmen's Compensation Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

(h) Members of the Workmen's Compensation Commission shall receive compensation for each day they are engaged in the performance of their duties as members of the Workmen's Compensation Commission at the daily rate prescribed for GS-18 under section 5332 of title 5, United States Code, and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Workmen's Compensation Commission.

(i) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(j) On the ninetieth day after the date of submission of its final report to the President, the Workmen's Compensation Commission shall cease to exist.

ECONOMIC ASSISTANCE TO SMALL BUSINESSES

SEC. 28. (a) Section 7(b) of the Small Business Act, as amended, is amended—

(1) by striking out the period at the end of "paragraph (5)" and inserting in lieu thereof "; and"; and

(2) by adding after paragraph (5) a new paragraph as follows:

"(6) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in effecting additions to or alterations in the equipment, facilities, or methods of operation of such business in order to comply with the applicable standards promulgated pursuant to section 6 of the Occupational Safety and Health Act of 1970 or standards adopted by a State pursuant to a plan approved under section 18 of the Occupational Safety and Health Act of 1970, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph."

(b) The third sentence of section 7(b) of the Small Business Act, as amended, is amended by striking out "or (5)" after "paragraph (3)" and inserting a comma followed by "(5) or (6)".

(c) Section 4(c)(1) of the Small Business Act, as amended, is amended by inserting "7(b)(6)," after "7(b)(5)".

(d) Loans may also be made or guaranteed for the purposes set forth in section 7(b)(6) of the Small Business Act, as amended, pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended.

ADDITIONAL ASSISTANT SECRETARY OF LABOR

SEC. 29. (a) Section 2 of the Act of April 17, 1946 (60 Stat. 91) as amended (29 U.S.C. 553) is amended by—

(1) striking out "four" in the first sentence of such section and inserting in lieu thereof "five"; and

(2) adding at the end thereof the following new sentence, "One of such Assistant Secretaries shall be an Assistant Secretary of Labor for Occupational Safety and Health."

(b) Paragraph (20) of section 5315 of title 5, United States Code, is amended by striking out "(4)" and inserting in lieu thereof "(5)".

ADDITIONAL POSITIONS

SEC. 30. Section 5108(c) of title 5, United States Code, is amended by—

(1) striking out the word "and" at the end of paragraph (8);

(2) striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding immediately after paragraph (9) the following new paragraph:

"(10) (A) the Secretary of Labor, subject to the standards and procedures prescribed by this chapter, may place an additional twenty-five positions in the Department of Labor in GS-16, 17, and 18 for the purposes of carrying out his responsibilities under the Occupational Safety and Health Act of 1970;

"(B) the Occupational Safety and Health Review Commission, subject to the standards and procedures prescribed by this chapter, may place ten positions in GS-16, 17, and 18 in carrying out its functions under the Occupational Safety and Health Act of 1970."

EMERGENCY LOCATOR BEACONS

SEC. 31. Section 601 of the Federal Aviation Act of 1958 is amended by inserting at the end thereof a new subsection as follows:

"EMERGENCY LOCATOR BEACONS

"(d)(1) Except with respect to aircraft described in paragraph (2) of this subsection, minimum standards pursuant to this section shall include a requirement that emergency locator beacons shall be installed—

"(A) on any fixed-wing, powered aircraft for use in air commerce the manufacture of which is completed, or which is imported into the United States, after one year following the date of enactment of this subsection; and

"(B) on any fixed-wing, powered aircraft used in air commerce after three years following such date.

"(2) The provisions of this subsection shall not apply to jet-powered aircraft; aircraft used in air transportation (other than air taxis and

charter aircraft); military aircraft; aircraft used solely for training purposes not involving flights more than twenty miles from its base; and aircraft used for the aerial application of chemicals."

SEPARABILITY

SEC. 32. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

APPROPRIATIONS

SEC. 33. There are authorized to be appropriated to carry out this Act for each fiscal year such sums as the Congress shall deem necessary.

EFFECTIVE DATE

SEC. 34. This Act shall take effect one hundred and twenty days after the date of its enactment.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill, and agree to the same.

CARL D. PERKINS,
EDITH GREEN,
FRANK THOMPSON, Jr.,
JOHN H. DENT,
DOMINICK V. DANIELS,
JAMES G. O'HARA,
AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
WILLIAM D. HATHAWAY,
LLOYD MEEDS,
PHILLIP BURTON,
JOSEPH M. GAYDOS,
WILLIAM H. AYRES,
ALBERT H. QUIE,
JOHN N. ERLNBORN,
MARVIN L. ESCH,
EDWIN D. ESHLEMAN,
WILLIAM A. STEIGER,

Managers on the Part of the House.

HARRISON A. WILLIAMS,
RALPH W. YARBOROUGH,
JENNINGS RANDOLPH,
CLAIBORNE PELL,
GAYLORD NELSON,
WALTER F. MONDALE,
THOMAS F. EAGLETON,
ALAN CRANSTON,
JACOB K. JAVITS,
WINSTON L. PROUTY,
WILLIAM B. SAXBE,
RICHARD S. SCHWEIKER,
PETER H. DOMINICK,

Managers on the Part of the Senate.

OCCUPATIONAL SAFETY AND HEALTH

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women, to assist and encourage States to participate in efforts to assure such working conditions, to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a new text. The conference report recommends a substitute text for both the Senate bill and the House amendment. Except for minor, technical, and clarifying differences, this statement describes the actions of the conferees insofar as they recommend changes in the House amendment.

CONGRESSIONAL FINDINGS AND PURPOSE

The findings and purposes of the Senate bill and the House amendment were consistent but the House provisions were more detailed. The Senate receded.

DEFINITIONS

Under the Senate bill to qualify as a "national consensus standard", interested parties had to reach substantial agreement on its adoption after diverse views had been considered. Under the House amendment, a standard qualified if in the process interested parties' views were considered. The House receded.

APPLICABILITY OF ACT

The Senate bill did not provide coverage for Guam. The House amendment did. A House provision excluded from coverage any vessel underway on the Outer Continental Shelf lands. The House receded on the second point, the Senate on the first.

EFFECT ON OTHER LAWS

The Senate bill said the Act should not apply to working conditions with respect to which other Federal agencies exercise statutory authority affecting occupational safety and health, while the House amendment excluded employees whose working conditions were so regulated. The House language had an additional exclusion relating to employees

whose safety and health were regulated by state agencies acting under section 274 of the Atomic Energy Act of 1954. The House receded on the first point; the Senate receded on the second.

The Senate bill provided that safety standards under any law administered by the Secretary of Labor (Walsh-Healy, Service Contract Act, Construction Safety Act, Arts and Humanities Act, and Longshore Safety) would be superseded when more effective standards are promulgated under this Act, but until then they were deemed standards under the present Act. The enforcement process of this Act was thus added to the enforcement procedures of those other Acts. The House amendment repealed and rescinded standards under the Walsh-Healy, the Service Contracts, and the Arts and Humanities Acts. All construction industry employers were exempted from this Act and the entire industry brought under the Construction Safety Act. That Act was amended to make the enforcement provisions of this Act applicable. Unlike the Senate bill which left the hearing of contract violation cases with the Secretary, the House amendment provided the hearing of such cases by the Safety and Health Commission. The House receded.

The conferees intend that the Secretary develop health and safety standards for construction workers covered by Public Law 91-54 pursuant to the provisions of that law and that he use the same mechanisms and resources for the development of health and safety standards for all the other construction workers newly covered by this Act, including those engaged in alterations, repairs, painting and/or decorating.

It is understood by the Conferees that in any enforcement proceedings brought under either this Act or under such other Acts, the principle of collateral estoppel will apply.

DUTIES OF EMPLOYERS AND EMPLOYEES

Employers' Duties.—The Senate bill required workplaces to be free from "recognized hazards". The House amendment required such places to be free from "any hazards which are readily apparent and are causing or are likely to cause death or serious bodily harm." The House provision was adopted with the Senate's "recognized hazard" term replacing the House's "readily apparent hazard."

Employees' Duties.—The Senate bill required each employee to comply with occupational health and safety standards and the rules, regulations, and orders issued under this Act. The House amendment had no comparable provision. The House rededed.

THE PROMULGATION OF HEALTH AND SAFETY STANDARDS

Who Should Promulgate.—The Senate bill provided for the promulgation of occupational safety and health standards by the Secretary of Labor. The House amendment authorized their promulgation by a National Occupational Safety and Health Board. The House receded.

Interim Standards—Procedure.—Unless it was determined that such standards would not improve safety or health, both versions of the bill required the earliest practical promulgation of national consensus and established Federal standards and permitted use of an informal, shortened rule-making procedure. Two years were permitted in the Senate bill, three years in the House amendment. Not contained in

the House amendment was a Senate provision for the promulgation of existing proprietary standards also by a shortened rule-making procedure during the first two years. The Senate receded with respect to the issuance of proprietary standards. The House receded as to the time.

Permanent Standards—Procedure.—In the procedures provided for the establishment and promulgation of standards (other than those mentioned above) there were many similarities in the Senate bill and the House amendment. For instance, both the Secretary and Board were permitted to begin rule-making on their own motion or on the basis of petitions. Some of the procedural differences resulted mainly, however, from the choice of the respective bodies as to who should do the rule-making. The chief difference lay in the fact that the procedure for setting standards in the Senate bill was the informal rule-making procedures of the Administrative Procedure Act and required a hearing only if it was requested. The procedure for setting standards under the House amendment were under the formal rule-making procedures also provided in the Administrative Procedure Act. The House receded on the procedure for promulgating standards.

Once it was decided that a rule should be prescribed, both the Secretary (under the Senate bill) and the Board (under the House amendment) were permitted to appoint an advisory committee to make recommendations. The Senate bill required a report back from the advisory committee within 90 days, which could be extended to 270 days. The House amendment established the normal time to be 270 days, which could be extended to 1 year, 3 months. Both versions permitted the Secretary to prescribe a shorter period.

Under the Senate bill, the Secretary was required to publish a proposed rule promulgating, modifying or remaking a safety or health standard in the Federal Register. This publication had to follow within 60 days the recommendation of an advisory committee or, if they failed to report back, within 60 days of the time set by the Secretary for their recommendations. Publication in the Register permitted interested persons 30 days to submit written data or comments and to ask for a hearing. Within an additional 30 days the Secretary was required to publish any standard which had been objected to and a hearing requested. He had also to set a time and place for a hearing. Sixty days after the expiration of the time permitted for filing written data or comments, or 60 days after completion of the hearing, the Secretary had to issue the rule or determine that a rule should not be issued.

Under the House bill within 4 months after the advisory committee had made its recommendations (or if they failed to do so, 4 months after the time set for them to do so), the Board was required to schedule and give notice of a hearing on the proposal in the Federal Register.

The House provided for issuance of the rule promulgating, modifying, or revoking the standard or declining to do so, within 60 days following completion of the hearings where an advisory committee had acted, 120 days, where no such committee has been appointed. All Senate provisions as to procedure and time limitations were retained.

Effective Date.—Both the Senate bill and the House amendment permitted the Secretary or the Board, respectively, to delay the effective date of a new standard to permit affected employers to

familiarize themselves and their employees with its requirements. The House amendment limited that possible delay to 90 days. The Senate bill had no such limitation. The Senate receded.

Development of Standards.—The Senate bill directed the Secretary in setting standards dealing with toxic materials or harmful physical agents to set the standard which assures that no employee will suffer material impairment of health or functional capacity even if he is exposed for all his working life. The Senate bill also provided that (1) standards shall be based on research, demonstrations, experiments, and such other information as may be appropriate; (2) in addition to the attainment to the highest degree of health and safety protection to the employee, other considerations shall be the latest scientific data in the field, the feasibility of these standards, and experience gained under this and other health and safety standards and (3) whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired. The House amendment had no comparable provisions. The House receded with an amendment which provides that employers may petition for a temporary variance from an occupational health or safety standard if they are unable to comply with a standard for the following limited reasons: unavailability of professional or technical personnel or of necessary materials or equipment or because necessary construction or alteration of facilities cannot be completed in time. Economic hardship is not to be a consideration for the qualification for a temporary extension order. Employees are entitled to a hearing on the order. Such an order may be issued for a maximum period of one year and may not be renewed more than twice.

The conference agreement also permits a variance to permit an employer to participate in an approved experiment to demonstrate or validate new techniques to improve employees safety.

Standards—Labels and Warnings.—The Senate bill required standards requiring labels and other warnings to apprise employees of hazards, symptoms, treatments and precautions, etc. The House amendment similarly required the posting of labels and warnings to apprise employees of the existence of hazards and of the suggested methods of avoiding or alleviating them. Such labeling and warning standards were also directed by the Senate bill to be prescribed for protective equipment, control procedures, monitoring methods, and medical examinations. An informal rule-making process was permitted for modifying such labeling, monitoring, and medical examination requirements. The House amendment contained no comparable provision. The House receded.

Both versions required publication of the statement of reasons why an adopted rule would better effectuate the purposes of the Act than a national consensus standard with which it differs. The Senate bill required a publication of the statement in the Federal Register. The House required its publication as part of the rule. The adopted version requires a simultaneous publication of the rule and the statement.

Emergency Temporary Standards.—Emergency temporary standards could be issued under either version of the bill without regard to the normal rule-making requirements and to take immediate effect. The Senate bill permitted such issuances where grave danger results from exposure to toxic substances, harmful physical agents, or new hazards.

The House amendment limited emergency standards to toxic substances, or new hazards "resulting from the introduction of new processes." The House receded.

Standards—Exemption, Variance.—Both the Senate bill and the House amendment permitted an employer limited freedom from a standard promulgated under the Act when he provided equally safe and healthful conditions. The Senate bill characterized this as a "variance" while the House called it an "exemption." The Senate term prevailed.

Standards—Pre-enforcement Review.—The Senate bill permitted pre-enforcement judicial review by anyone adversely affected by any standard in his local circuit court of appeals provided he filed within 60 days after the promulgation. Pre-enforcement review was limited by the House amendment to the D.C. Court of Appeals and to within 30 days of issuance. The "substantial evidence" test was the basis of court review in the House amendment; in the Senate bill, the more vigorous standards generally applicable to review of rules would have been applicable. Review in the local Circuit Court of Appeals, the use of the "substantial evidence" test, and a 60-day limitation on the appeal time were accepted by the conferees.

Delegation of Authority.—Under the House amendment the Secretary was authorized to delegate his inspection authority to other agencies of the Federal Government or to agencies of the States with their permission. The Senate bill had no such provision. The House receded.

Advisory Committees—Memberships.—The House amendment made the appointment of employer and employee representatives to Advisory Committees mandatory in standard-setting proceedings. The Senate bill did not. The Senate receded.

Advisory Committees—Meetings.—The House amendment required that Advisory Committee meetings be open to the public, whereas the Senate bill did not. The Senate receded.

National Advisory Committee.—The Senate bill provided that the National Advisory Committee should have twenty members, the House amendment provided for twelve. The Senate bill specifically provided for representation on the Committee of the occupational safety and health professions. The House amendment did not. The House language was adopted but modified to provide for representation of the safety and health professions.

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

Inspections.—The House amendment required that an inspector's entry into a workplace be permitted "without delay," which was not specified in the Senate bill. The Senate bill specified that the inspector could "privately" question employers, owners, agents and employees, the House amendment did not. The Senate receded on the first point, the House on the second. The Senate receded also to the House on its version of the provision authorizing compulsory process for witnesses and the production of evidence.

Inspections—Record Keeping.—The Senate bill permitted the Secretary to require record-keeping not only to insure compliance but also for the collection of research information. The House amendment limited his authority to the former purpose. The House receded.

Self-Inspection and Protection.—The Senate bill permitted the Secretary to require periodic self-inspections by the employer and certification of the results. There was no such provision in the House amendment. The House receded, with an amendment, deleting the language with respect to the certification of results. A Senate bill provision, without a House amendment counterpart, permitting the Secretary to require the posting of notices to keep employees informed of the protections of the Act, was retained.

Employer Reports.—A Senate bill provision without a counterpart in the House amendment permitted the Secretary to require an employer to keep records and make reports on "all work-related deaths, injuries and illnesses." The House receded with an amendment limiting the reporting requirement to injuries and illnesses other than of a minor nature, with a specific definition of what is not of a minor nature.

Employee Exposure Records.—The Senate bill, but not the House amendment, required the recording of employee exposures to potentially toxic or harmful materials required to be monitored or measured under Sections 6 (standards) or 19 (research). The House receded with an amendment which required recording only of those substances required to be monitored or measured under Section 6.

The Senate bill provided and the House amendment did not, for employee access to the monitoring process and for an employee's right to be notified when he had been exposed to *potentially* toxic substances. The House receded with the deletion of the word "potentially."

Information Required of Employers.—Both the Senate bill and the House amendment provided that the federal information requirement imposed on employers be as light as possible with duplication kept to a minimum. The House amendment, in addition, placed a similar stricture on State agencies operating under this Act. The Senate receded.

Labor-Management Aid of Inspection.—The Senate bill required that both a management and an employee representative be given an opportunity to accompany an inspector conducting an inspection of the workplace. Where there is no employee representative the Senate bill required consultation with a reasonable number of employees about safety in the workplace. The House amendment did not require such an opportunity for either the employer or the employee representative but provided that if the employer accompanied the Secretary during the conduct of an inspection the employee representative would also be given the opportunity. The House receded with the understanding that the provision in itself does not confer authority on the Secretary to prescribe regulations with respect to representation questions in a collective bargaining context.

Special Inspections.—A special inspection was required by the Senate bill as soon as practicable where an employee alleges the violation of a standard in writing, and the Secretary finds probable cause to believe that a violation exists. In case of a refusal to conduct an inspection or if any inspection results in a finding that no violation exists, a notification of that decision must be provided the employee in writing. The House receded. Where during any inspection or prior to a scheduled inspection an employee alleges a violation in writing, the Senate bill required a written explanation of a negative finding. An informal review process was in the latter instance also provided for.

There were no comparable provisions in the House amendment. The House receded with amendments requiring the employer to be given notice of the request for an inspection and deleting the requirement that failure to find a violation be explained in writing.

CITATIONS FOR VIOLATIONS

The Senate bill provided that if, upon inspection or investigation, the Secretary or his authorized representative "determines" that an employer has violated mandatory requirements under the Act, he shall "forthwith" issue a citation. The House amendment provided that if on the basis of an inspection or investigation the Secretary "believes" that an employer has violated such requirements, he shall issue a citation to the employer. The conference report provides that if the Secretary "believes" that an employer has violated such requirements he shall issue the citation with reasonable promptness. In the absence of exceptional circumstances any delay is not expected to exceed 72 hours from the time the violation is detected by the inspector.

The Senate bill kept separate the proceedings for the issuance of the citation from those with respect to the imposition of penalties for violations. The House amendment combined proposed penalties with the issuance of the citation. The conference report follows the provisions of the Senate bill in this respect.

The Senate bill provided for a notice in lieu of citations in de minimis cases. The House amendment did not require a citation in de minimis cases. The conference report follows the provisions of the Senate bill.

The House amendment permitted a citation to be issued no later than 90 days following the occurrence of a violation. There was no comparable Senate provision. The House receded.

Both versions required the posting of citations at or near the place of violation, but the Senate bill expressly provided that posting regulations should be issued by the Secretary. The conference report contains the provisions of the Senate bill.

The House amendment prohibited issuance of a citation more than three months after the occurrence of any violation. The Senate bill had no such statute of limitations. The Senate receded with an amendment changing the three months to six months.

Under the Senate bill the Secretary had to notify the employer within a reasonable time after a citation of the amount of a penalty. The employer had to give notice of his intention to contest the citation or penalty with fifteen days of the notice or the penalty was to be final. Under the House amendment the employer had similar rights. He was to notify the Secretary of his intention to appeal. The Secretary was to notify the Appeals Commission which had to give him a hearing. The House receded.

The Senate bill specified procedures to be followed when there was a failure to correct a violation within the time provided in a citation. The House amendment contained no such provision. The House receded.

The Senate bill gave employees the right to appeal the time allowed for abatement of a violation and provided that the Commission should prescribe rules of procedure giving employees the opportunity to

participate as parties. The House amendment restricted the right of appeal in such cases to the employer. The House receded with an amendment which provides that the employer shall have a right to reopen the proceedings for a re-hearing in the event it is impossible to comply with the abatement requirements within the period provided for in the citation.

JUDICIAL PROCEEDINGS

Both the Senate bill and the House amendment provided for judicial review of Commission decisions. The Senate bill provided appeal rights to any person adversely affected or aggrieved by an order of the Commission. The House amendment limited appeal rights to the employer and the Secretary. The House amendment provided for judicial review in the Court of Appeals for the circuit where the violation occurred or where the employer had his principal office. The Senate bill also permitted review in the D.C. Court of Appeals. The House receded.

Under the Senate bill all Commission orders became final fifteen days after issuance unless stayed by the Court of Appeals. Under the House amendment the filing of a petition for review automatically stays a Commission order. The Senate bill, but not the House amendment, permitted uncontested orders of the Commission to be entered as orders of the Court of Appeals. The House receded with an amendment providing for the finality of Commission orders thirty days after issuance unless stayed by the court.

The Senate bill provided for assessment of penalties in contempt proceedings to enforce a Court of Appeals decree. The House bill had no comparable provision. The House receded.

The Senate bill did not contain a provision which was in the House amendment authorizing a district court suit to collect civil penalties. The Senate receded.

The Senate bill provided for administrative action to obtain relief for an employee discriminated against for asserting rights under this Act, including reinstatement with back pay. The House bill contained no provision for obtaining such administrative relief; rather it provided civil and criminal penalties for employers who discriminate against employees in such cases. With respect to the first matter, the House receded with an amendment making specific the jurisdiction of the district courts for proceedings brought by the Secretary to restrain violations and other appropriate relief. With respect to the second matter dealing with civil and criminal penalties for employers, the House receded.

OCCUPATIONAL SAFETY AND HEALTH APPEALS COMMISSION

The Occupational Safety and Health Review Commission in the Senate bill and the Occupational Safety and Health Appeals Commission in the House amendment are composed of three members in each instance, with terms under the Senate bill of five years and under the House amendment of six years. In other respects, though differing in actual language, both bills were alike in legal effect. With respect to the terms of office the Senate receded. But in the other respects, the conference report uses the language in the Senate bill.

The Senate bill provided that all members of the Appeals Commission were to receive the same salary at Executive Level 4. The House amendment gave the Chairman a higher salary at Executive Level 3. The Senate receded. The House amendment provided that the Commission might appoint hearing examiners without regard to any statutory limitations on grades GS-16 and above. The Senate receded.

PROCEDURES TO COUNTERACT IMMINENT DANGERS

The Senate bill authorized the Secretary to seek a court order to remove or correct an imminent danger and require the withdrawal of endangered persons other than "those necessary to correct the danger, maintain the operating capacity of a continuous process operation or permit a safe and orderly shutdown." The Senate bill contained no limitation on the duration of such a temporary restraining order, although the 10-day limit in the F.R.C.P. was applicable. The Senate bill permitted the Secretary to issue an administrative imminent danger shutdown order where there was insufficient time to obtain a court order. The House amendment authorized the Secretary to seek court orders to restrain conditions or practices which caused imminent dangers. A temporary restraining order under the House amendment was to remain in effect only five days. The House amendment contained no provision permitting the Secretary to issue an administrative imminent danger order. The Senate receded with an amendment adopting with minor changes the limitations on court authority mentioned in the quotation above.

The Senate bill provided that if the Secretary arbitrarily or capriciously failed to issue or seek an imminent danger order, employees might seek a writ of mandamus against him. The House amendment provided that where the Secretary unreasonably failed to seek an order an employee injured thereby might bring an action for damages in the Court of Claims. The House receded.

The House amendment provided that where an injunction was issued the court must set a sum for the payment of damages if the injunction is eventually found to have been in error. There was no comparable provision in the Senate bill. The House receded.

REPRESENTATION IN CIVIL LITIGATION

The Senate bill and the House amendment contained comparable provisions for the Solicitor of Labor to appear for and represent the Secretary in any civil litigation brought under the Act, but the House amendment unlike the Senate bill made specific reference to the Attorney General's authority to represent the United States in the Court of Claims. The Senate receded. The conferees expect that the Solicitor of Labor will represent the Department of Labor in proceedings before the Review Commission.

CONFIDENTIALITY OF TRADE SECRETS

Provision was made in both versions of the bill for the protection of trade secrets. The House amendment provided that in proceedings arising under the Act such information should be presented off the public record and preserved separately. The Senate bill provided that the court or the Secretary should issue appropriate orders to preserve confidentiality. The House receded.

VARIATIONS, TOLERANCES AND EXEMPTIONS

Both bills provided that variations, tolerances and exemptions shall not be in effect more than six months without notification to employees and an opportunity for a hearing. In addition, the House bill also provided that variations, tolerances, and exemptions may not be granted in the first instance without notice and an opportunity for a hearing. The Senate receded.

PENALTIES

The Senate bill provided that there shall be assessed a civil penalty of not more than \$1,000 for each violation. The House amendment was similar unless the violation was determined not to be of a serious nature in which case a civil penalty of up to \$1,000 was discretionary. The Senate bill provided for civil penalties of not more than \$1,000 for each day in which an imminent danger order or final order of the Commission was violated. The House amendment also provided for a penalty of up to \$1,000 for each day in which an order which has become final was violated. The Senate receded on each point.

Both bills permitted mitigation, compromise, or settlement of penalties. The House amendment required publication in the Federal Register whenever the Secretary mitigated, compromised, or settled any penalty. Both bills contained similar provisions which specify the factors to be considered in assessing a penalty. The Senate receded.

The Senate bill provided criminal penalties for wilful violations (not more than \$10,000 and/or six months doubled after first conviction). The House amendment provided for a civil penalty of up to \$10,000 for wilful or repeated violations. The Senate receded on civil penalties and the House receded on criminal penalties with an amendment which requires that the wilful violation of the standard or the rule, regulation or order result in death to an employee, for the employer to be subject to the criminal penalties provided in the subsection.

The House amendment provided no penalty for giving advanced notice of any inspection to be conducted under the Act. The Senate bill provided a fine not to exceed \$1,000 and imprisonment for not more than six months or both for giving advanced notice. The House receded.

The Senate bill contained a provision providing penalties for false statements, representations, or certifications. The House amendment contained no comparable provision. The House receded.

Both bills provided identical penalties for any person who assaults, intimidates, or interferes with federal investigators and inspectors in the performance of their duties, though the bills took different approaches. The Senate bill extended to such investigators and inspectors the basic statutory protection contained in section 1114 of Title 18 of the United States Code. The House amendment set forth the prohibited activities and the penalties in the Act. The Conference Report contains the language of the Senate bill to which has been added language from the House amendment providing that a person who kills a person while engaged in or on account of the performance of his duties under the Act shall be punished by imprisonment for any term of years or for life.

The Senate bill, unlike the House amendment, did not specifically provide a penalty for violation of posting requirements. The Senate receded.

The House amendment contained a provision specifying the factors to be considered in the assessment of penalties. The Senate receded with an amendment which struck from the provision specified authority for the Commission to collect the penalties as well as to assess them.

The House amendment, unlike the Senate bill, contained a provision setting forth certain factors under which a serious violation shall be deemed to exist. The Senate receded.

STATE JURISDICTION AND STATE PLANS

Both versions of the bill provided for court review of a decision of the Secretary to reject or withdraw approval of a State plan. The Senate bill applied a "substantial evidence" standard of review and the House amendment applied an "arbitrary and capricious" standard. The House receded.

Both versions of the bill allowed agreements between the Secretary and a State whereby the State could continue enforcement of its health and safety standards pending final action on the State plan. The Senate bill limited such agreements to standards which were not in conflict with Federal standards. The Senate bill also provided that a State standard which was more stringent than a Federal standard was not to be regarded as one in conflict with that Federal standard. The Senate receded.

FEDERAL AGENCY SAFETY PROGRAMS AND RESPONSIBILITIES

Annual reports to the Congress with respect to progress of Federal agency safety programs were required in both the Senate bill and the House amendment. The Senate bill specified that the President should forward to the Congress a summary or digest of the reports submitted to him by the Secretary, whereas the House bill required the President to submit a report of the activities of Federal agencies in this regard. The Senate receded.

RESEARCH AND RELATED ACTIVITIES

Both bills required the Secretary of HEW to consult with the Secretary of Labor to develop a research plan in order to develop criteria to assist in setting standards. The Senate bill specified that criteria dealing with toxic materials and harmful physical agents should be developed to demonstrate the exposure levels at which the worker would experience no impairment of health function or life expectancy, whereas the House bill did not. The House amendment required annual publication of the criteria developed by the Secretary of HEW, whereas the Senate bill did not. The House receded on these provisions with an amendment to require the development of such criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacity or diminished life expectancy as a result of his work experience.

The Senate bill authorized the Secretary of HEW for research purposes to establish medical examinations for such employees and to require any employer to measure, monitor, and make reports on the exposure of his employees to potentially toxic or harmful agents. With regard to the latter, on the request of any such employer the Secretary was required to defray the added cost incurred by that employer. There was no comparable House provision. The House receded with the understanding that regulations issued by the Secretary of HEW pursuant to this subsection requiring employer measurement, recording, and reporting will be limited to those instances in which there is a reasonable probability of developing information on toxic substances or harmful physical agents.

The House amendment authorized appropriations of such sums as Congress deems necessary to enable the Secretary of Labor to purchase monitoring equipment for all employers required by any standard, rule or regulation to measure the exposure of employees to unhealthy environments for the protection of the employee and to establish compliance with such standards, rules or regulations. There was no comparable Senate provision. The House receded.

Both the Senate bill and the House amendment required the Secretary of HEW to publish on an annual basis a list of toxic substances. The Senate bill required only the publication of those toxic substances which are "used or found in the work place" whereas the House amendment did not contain such a limitation. The Senate receded.

Both the Senate bill and the House amendment provided for the determination of toxicity when requested by any employer or employee. The Senate bill provided that the Secretary of HEW make such a determination on "written request" which specified with "reasonable particularity" the grounds on which the request was being made. Under the Senate bill, if toxicity was determined and no applicable standard was in effect, the Secretary of Labor was to be so advised. There was no such requirement in the House amendment. Further, under the House amendment, the determination of toxicity was to be made by the Board and there was no requirement that the request be particularized or in writing. The House receded on these provisions.

The Senate bill required the Secretary of HEW to conduct and publish annually industrywide studies of the effects of chronic and low level exposure to industrial materials, processes, and stresses on the potential for illness, disease, or loss of functional capacity in aging adults. There was no comparable House provision. The House receded.

NATIONAL INSTITUTE

The Senate bill directed the delegation of HEW functions where feasible to a National Institute for Occupational Safety and Health established by the Senate bill. There were no comparable provisions in the House amendment. The Conference agreement provides for the creation of the National Institute and requires the delegation provided for in the Senate bill.

STATISTICS

Both versions of the bill provided for the collection, compilation and publishing of occupational safety and health statistics. The House amendment but not the Senate bill authorized such efforts for all employments whether or not they were covered by this Act, so long as they are included within the geographical authority of the Act. The Senate receded with an amendment to require the Secretary of Labor to consult with the Secretary of HEW in the carrying out of this statistical program, and specifying the types of injuries on which statistics must be collected.

The House amendment but not the Senate bill explicitly provided that any existing agreements between the Labor Department and the States for the collection of statistics remain in effect until superseded by new arrangements under this Act. The Senate receded.

AUDITS

Both versions of the bill authorized the Secretary of Labor to require grantees under the Act to maintain such records and accounts as deemed necessary. The Senate bill but not the House amendment provided the same authority to the Secretary of HEW. The House receded.

Both versions of the bill required all grantees to provide access to their books and records to the Secretary of Labor and the Comptroller General. The Senate bill also provided the Secretary of HEW with such access. The House receded.

COMMISSION ON WORKMEN'S COMPENSATION LAWS

The Senate bill established a National Commission on State Workmen's Compensation Laws to undertake an effective study and objective evaluation of State Workmen's Compensation laws. The Commission was required to report its findings, conclusions and recommendations to the President and the Congress no later than February 1, 1972. The House receded with an amendment changing the reporting date to July 31, 1972.

ADDITIONAL ASSISTANT SECRETARY OF LABOR

The Senate bill provided for an additional Assistant Secretary of Labor to be known as the "Assistant Secretary of Labor for Occupational Safety and Health." The House amendment did not. The House receded.

ADDITIONAL POSITIONS

To carry out responsibilities under the Act the Senate bill but not the House amendment provided for additional supergrade positions for the Department of Labor and the Review Commission. The House receded.

EMERGENCY LOCATOR BEACONS

The Senate bill, but not the House amendment, amended the Federal Aviation Act to require emergency locator beacons on aircraft. The House receded.

EFFECTIVE DATE

The conference agreement provides that the Act should take effect 120 days after the date of enactment as provided in the House amendment rather than in 30 days after the enactment as provided in the Senate bill.

TITLE

The conference adopted the title contained in the House bill which reads as follows: "An Act to assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes."

CARL D. PERKINS,
EDITH GREEN,
FRANK THOMPSON JR.,
JOHN H. DENT,
DOMINICK V. DANIELS,
JAMES G. O'HARA,
AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
WILLIAM D. HATHAWAY,
LLOYD MEEDS,
PHILLIP BURTON,
JOSEPH M. GAYDOS,
WILLIAM H. AYRES,
ALBERT H. QUIE,
JOHN N. ERLBORN,
MARVIN L. ESCH,
EDWIN D. ESHLEMAN,
WM. A. STEIGER,

Managers on the Part of the House.







